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OFFICE OF PETITIONS

In re Application of
Catreau et al.
Patent Number: 7,822,140
Issue Date: 10/26/2010
Application No. 10/801930
Filing or 371(c) Date: 03/16/2004
Attorney Docket Number: 16136US02

: DECISION ON APPLICATION
: FOR RECONSIDERATION OF
: PATENT TERM ADJUSTMENT

This is a decision on the petition filed on December 22, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand four hundred thirty-four (1434) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand four hundred thirty-four (1434) days is DISMISSED.

Applicants request 1434 days of patent term adjustment pursuant to 37 CFR 1.703(b), in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a), March 17, 2007, and ending on the day the date a Request for Continued Examination (“RCE”), was filed, November 30, 2009.

As to the “B” delay, the period is 866 days, not 989 days. This period begins on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a), and ends on November 29, 2009, the day before the RCE was filed, and is 989 days, but does not include the number of days *beginning on the date* on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31, July 30, 2009, and ending on the day before the RCE was filed, November 29, 2009, or 123 days. See, 35 U.S.C. 154(b)(1)(B)(ii)¹. Thus, the “B” delay period is 866 days (989 days – 123 days), not 989 days².

¹ Petitioner avers that the subtraction from the three-year guarantee for an RCE, which is based upon 35 U.S.C. § 154(b)(1)(B)(i), and the subtraction from the three-year guarantee for an appeal, which is based upon 35 U.S.C. §

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

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154(b)(1)(B)(ii), are not calculated using the same method of computation. However, as calculated *supra*, both the filing date of the RCE and the filing date of the Notice of Appeal are counted as day 1 of reduction of PTA.

² The Office notes that where a request for continued examination ("RCE"), has been filed, the period of appeal is only reduced if such appeal period occurred prior to the filing of the RCE. If no RCE has been filed, the period of appeal is reduced if it occurs at anytime during the pendency of application.